TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 1380.

JULIA A. NUTT, EXECUTRIX OF HALLER NUTT, DECEASED, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 3, 1898.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

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JULIA A. NUTT, EXECUTRIX OF HALLER NUTT, DECEASED, APPELLANT,

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JUDD & DETWEILER, PRINTERS, WASHINGTON, MARCH 5, 1888.

1 In the Court of Claims. Term 1887–1888.

JULIA A. NUTT, Executrix of Haller Nutt, Dec'd,
vs.
THE UNITED STATES. } No. 15652.

I.—*Minutes by the Clerk.*

The original petition in this cause was filed by the claimant May 11, 1887.

On November 10, 1887, leave was granted by the court to claimant to file the following amended petition as a substitute for said original petition:

II.—*Amended Petition. Filed Nov.* 10, 1887.

The petition of Julia A. Nutt respectfully shows—

I. That she is a citizen of the United States and a resident of Natchez, in the State of Mississippi, and that she is the widow and executrix of Haller Nutt, deceased, who was formerly of said city of Natchez, and was a loyal citizen of the United States, and departed this life in the year 1864.

II. That, as the widow and executrix of said Haller Nutt, the petitioner had certain claims against the Government of the United States growing out of the use and occupation by the Army of the United States of certain property, real and personal, belonging to said Haller Nutt, and thereupon, in 1874 and subsequent years, she petitioned the Congress of the United States for relief in the premises; thereupon Congress passed the following act, approved August 7, 1882 (22 Statutes, p. 734), for her benefit:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Quartermaster General of the United States is hereby authorized and
2 directed to examine and adjust the claims of Julia Nutt, widow and executrix of Haller Nutt, deceased, late of Natchez, in the State of Mississippi, growing out of the occupation and use by the United States Army during the late rebellion of the property of the said Haller Nutt during his lifetime or of his estate after his decease, including live stock, goods, and moneys taken and used by the United States or the armies thereof; and he may consider the evidence heretofore taken on said claim, so far as applicable, before the commissioners of claims and such other evidence as may be adduced before him in behalf of the legal representatives of Haller Nutt or in behalf of the United States, and shall report the facts to Congress to be considered with other claims reported by the Quartermaster General: Provided, That no part of said claims upon which said commissioners of claims have passed on the merits shall be considered by the Quartermaster General."

III. That in pursuance of the authority so vested in him the Quartermaster General examined and adjusted the said claims and stated an account between the United States and this petitioner and found that there was due in the premises from the United States to

this petitioner the sum of two hundred and fifty-six thousand eight hundred and eighty-four dollars and five cents ($256,884.05), and he so reported to the Congress of the United States.

IV. That, in acceptance and approval of the finding of the Quartermaster General in the premises and in part payment on such account stated the Congress of the United States, by its act approved July 5, 1884, entitled "An act for the allowance of certain claims reported by the accounting officers of the United States Treasury Department, and for other purposes," provided for the payment "to Julia A. Nutt, widow and executrix of Haller Nutt, deceased, of Adams county, in the State of Mississippi, the sum of thirty-
3 five thousand five hundred and fifty-six dollars and seventeen cents ($35,556.17)," leaving due to the petitioner upon said account stated the sum of $235,002.50.

The petitioner avers that she is the sole owner of the claim herein set forth; that no assignment or transfer thereof or any interest therein has been made by her; that she is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets, and that the petitioner and her whole family have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided or abetted or given encouragement to rebellion against said Government, and she believes the facts stated in this petition to be true.

The petitioner therefore prays judgment against the United States for the sum of two hundred and thirty-five thousand two dollars and fifty cents, ($235,002.50,) with interest from July 5, 1884.

JULIA A. NUTT, *Executrix*,
Per S. P. NUTT, *Att'y*.

COUNTY OF WASHINGTON, *District of Columbia*, } ss:

Before me personally appeared S. Prentiss Nutt, attorney for petitioner above mentioned, and made oath that the matters averred in the foregoing petition are true to the best of his knowledge, information, and belief.

Sworn to before me this ninth day of November, A. D. eighteen hundred and eighty-seven.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk C. C.

M. F. MORRIS,
Attorney for Claimant, 1304 *F Street, Washington, D. C.*

4 III.—*Traverse Filed by Defendants.*

And now comes the Attorney General on behalf of the United States and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed, and as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to re-

bellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
Ass't Att'y General.

5 IV.—*Findings of Fact and Conclusion of Law. Filed January 30, 1888.*

This case having been heard before the Court of Claims the Court, upon the evidence, finds the facts to be as follows:

I.

On the 22d December, 1882, the Quartermaster General, acting under and pursuant to the act for the relief of Julia A. Nutt, widow and executrix of Haller Nutt, deceased, 7th August, 1882 (22 Stat. L., p. 734), reported to Congress, through the Secretary of War, that he had examined the claims of Mrs. Julia A. Nutt, as widow and executrix, and the nature and manner of his investigation and the circumstances and evidence relating to the same. He further reported as follows:

All the evidence considered, as well as the additional information I have been able to gather, warrants me in recommending that Julia A. Nutt be paid the following items, which, in my judgment, are sufficiently proved by the evidence, viz:

1 cotton-gin and mill, burned by General Grant's troops	$20,000 00
1 cypress fence (complete), burned for fuel by General Grant's troops	3,686 40
Household goods taken by Grant's troops	7,155 00
27 horses and mules, at $150 each	4,050 00
100 loads fodder	1,500 00
15 bushels corn, at $1 per bushel (receipt filed)	15 00
153,700 bricks, at $7 per M, taken by Union troops	1,075 90
122,000 feet cypress lumber, at $45 per M feet, taken by Union troops	5,490 00
8,289 $\frac{40}{100}$ feet cypress fence (complete)	1,119 12
6 horses, at $150 each (receipt filed)	900 00
5 halters, at 35 cents each (receipt filed)	1 75
700 bales of cotton burned in gin, 426 pounds to the bale, at 37½ cents per pound	111,328 00
4,000 cords of wood, at $3.50 per cord	14,000 00
1,700 acres corn, 40 bushels to acre, 68,000 bushels, at $1	68,000 00
1,700 acres pease, 10 bushels to acre, 17,000 bushels, at $2	17,000 00
2 kegs of nails, at $6	12 00
2 cans of lard oil, at $15	30 00
100 barrels of pork, at $15.21 per barrel	1,521 00
Total	256,884 05

II.

The foregoing report was transmitted direct by the Secretary of War to Congress and was not transmitted to or acted upon by the accounting officers of the Treasury.

III.

The sum of $35,556.17, directed to be paid to the claimant by the appropriation act, 5th July, 1884 (23 Stat. L., pp. 552-586), was by the Treasury Department paid to the claimant, who accepted and received the same. No receipt, discharge, or acquittance of any kind was given by the claimant in consideration of such payment.

Conclusions of Law.

And upon the foregoing findings of facts the Court decides as conclusion of law—

The petition of the claimant should be dismissed.

6 V.—*Statement of Case and Opinion.*

On the 7th of August, 1882, Congress passed an act for the relief of the claimant in the following terms:

That the Quartermaster General of the United States is hereby authorized and directed to examine and adjust the claims of Julia A. Nutt, widow and executrix of Haller Nutt, deceased, late of Natchez, in the State of Mississippi, growing out of the occupation and use by the U. S. Army, during the late rebellion, of the property of the said Haller Nutt, during his lifetime, or of his estate after his decease, including live stock, goods, and moneys taken and used by the United States or the armies thereof; and he may consider the evidence heretofore taken on said claim, so far as applicable, before the commissioners of claims, and such other evidence as may be adduced before him in behalf of the legal representatives of Haller Nutt, or in behalf of the United States, and shall report the facts to Congress, to be considered with other claims reported by the Quartermaster General: Provided, That no part of said claims upon which said commissioners of claims have passed on the merits shall be considered by the Quartermaster General. (Act 7th August, 22 Stat. L., p. 734.)

So far as the present action is involved the following are the important and mandatory words of the act:

That the Quartermaster General is hereby authorized and directed to examine and adjust the claims of Julia A. Nutt, widow and executrix, and shall report the facts to Congress, to be considered with other claims reported by the Quartermaster General.

The Quartermaster General accordingly investigated the claims, and on the 22d December, 1882, made a long and minute report to Congress, which detailed the methods of his investigation and concluded by recommending the payment of eighteen items, some of which were for property taken by the army in Mississippi, some for property destroyed, and all of which amounted to $256,884.05.

This report was considered by Congress and an appropriation of $35,556.17 was made for the claimant by the act 5th July, 1884 (23 Stat. L., pp. 552-586), a statute which directed the payment of specified amounts to a number of persons named therein, "the same being in full for, and the receipt of the same to be taken and accepted in each case as a full and final discharge of, the several claims examined and allowed by the proper accounting officers under the provisions of the act 4th July, 1864."

This amount of $35.556.17 was paid to and accepted by the claimant; but inasmuch as her claims were never examined or allowed by the accounting officers under the act 4th July, 1864, it is maintained by her counsel that her acceptance of that amount does not operate as a full and final discharge, and on the contrary leaves her free to maintain her action for the balance of the amount.

As the property included in the report was taken or destroyed by the Army of the United States engaged in active hostilities in what was then enemy's territory, no claim arose which courts of the United States could recognize as a right of action; and this court, moreover, is expressly prohibited by the act 4th July, 1864 (13 Stat. L., p. 381, sec. 1), from entertaining jurisdiction of such cases. The claimant, therefore, rests the case entirely upon the private act, 1882, in connection with the report and recommendation of the Quartermaster General and the appropriation act of 1884.

The theory by which the learned counsel for the claimant maintains the case is that the report of the Quartermaster General was an award, obligatory and final, upon which an action can be founded irrespective of the claims and demands merged therein, or that if not an award it was at least "an account stated," recognized and ratified by the appropriation act which directed the payment of what was presumably a portion of the account.

7 *Opinion.*

Per Curiam:

A final award in which pre-existing demands are merged and upon which an action can be maintained involves the mutual submission of contested rights to the final determination of an arbitrator whose decision shall be obligatory upon either party; but the court is of the opinion that in the present case no single right, legal or equitable, was submitted to the arbitrament of the Quartermaster General, whose only duty after examining and adjusting the "claims" was to "report the facts" for the "consideration" of Congress.

As to the second ground taken by counsel the Court is of the opinion that "an account stated" grows out of commercial transactions, being the rendition of a running account by one party to the other and his acceptance or acquiescence in its accuracy and amount. It is therefore in legal effect but the liquidation of fractional items into a single amount by the agreement of parties, express or implied. In the present case the Court is unable to per-

ceive in the report of the Quartermaster General a single element of an account stated. There was no running account between the parties; there had been no transactions which brought them within the usage or law of merchants; the account was not rendered by one party to the other; time did not run against the Government so as to raise a presumption of acquiescence, and the subsequent payment of a part instead of the whole negatived the idea that the whole was acquiesced in by Congress and acknowledged as an indebtedness.

The private act was simply a direction by a principal, Congress, to an agent, the Quartermaster General, to investigate a demand presented by a third person, the claimant, and report the facts for the consideration of his principal. If such a statute can be made a basis of legal liability it will be dangerous for Congress to seek information in any case or give assistance to any claimant.

The judgment of the Court is that the petition be dismissed.

8 VI.—*Judgment by the Court.*

At a Court of Claims held in the city of Washington on the 30th day of January, 1888, judgment was ordered to be entered as follows:

The Court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimant, Julia A. Nutt, executrix of Haller Nutt, deceased, be dismissed.

By the court.

9 VII.—*Application of Claimant for and Allowance of Appeal.*

JULIA A. NUTT, Executrix of Haller Nutt, Deceased,
vs.
THE UNITED STATES. } No. 15652.

The claimant, Julia A. Nutt, executrix of Haller Nutt, deceased, by M. F. Morris, her attorney, comes and moves the court for the allowance of an appeal in this cause from the judgment of the Court pronounced against her to the Supreme Court of the United States.

M. F. MORRIS,
Attorney for Claimant.

Filed February 6, 1888.

Allowed in open court February 6, 1888.

WILLIAM A. RICHARDSON,
Chief Justice.

10 In the Court of Claims.

JULIA A. NUTT, Executrix of Haller Nutt, Deceased,

vs.

THE UNITED STATES.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause of the findings of fact by the Court and the conclusion of law thereon, of the statement and opinion of the Court, of the judgment of the Court, of the application of the claimant for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at the city of Washington, this 3d day of March, A. D. 1888.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clk C't of Claims.

Endorsed on cover: Court of Claims. No. 1380. Julia A. Nutt, executrix of Haller Nutt, deceased, appellant, vs. The United States. Filed March 3, 1888.

125-650

JAMES H. McKENNEY

Supreme Court of the United States.

OCTOBER TERM, A. D. 1867.

No. 1380.

JULIA A. NUTT, EXECUTRIX OF HALLER NUTT, APPELLANT,

vs.

THE UNITED STATES.

Appeal from the Court of Claims.

BRIEF FOR APPELLANT.

M. F. MORRIS,
Attorney for Appellant.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1887.

No. 1380.

JULIA A. NUTT, EXECUTRIX OF HALLER NUTT, APPELLANT,

vs.

THE UNITED STATES.

Appeal from the Court of Claims.

BRIEF FOR APPELLANT.

I.

STATEMENT OF CASE.

Haller Nutt, a resident and citizen of Natchez, in the State of Mississippi, was conspicuously loyal to the United States during the war of the rebellion. His house was frequently the headquarters of General Grant and other generals of the Union Army. He furnished large supplies to the Federal troops. He died in 1864, towards the end of the war, leaving his widow and large family of young children in greatly reduced circumstances.

The widow and executrix made application to Congress for payment for the property taken and used by the army;

and Congress, recognizing the exceptionally meritorious character of her claim, and the fact that Mr. Nutt had received *safeguards* from General Grant for his family and his property, passed for her benefit an act approved August 7, 1882 (22 Stat., 734), which is in the following terms:

"*Be it enacted*, &c., That the Quartermaster General of the United States is hereby authorized to examine and adjust the claims of Julia A. Nutt, widow and executrix of Haller Nutt, deceased, late of Natchez, in the State of Mississippi, growing out of the occupation and use by the United States Army during the late rebellion of the property of said Haller Nutt during his lifetime, or of his estate after his decease, including live stock, goods, and moneys, taken and used by the United States or the armies thereof, and he may consider the evidence heretofore taken on said claim, as far as applicable, before the Commissioners of Claims, and such other evidence as may be adduced before him on behalf of the legal representatives of Haller Nutt or on behalf of the United States, and shall report the facts to Congress to be considered with other claims reported by the Quartermaster General: *Provided*, That no part of said claims upon which said Commissioners of Claims have passed on the merits shall be considered by the Quartermaster General."

A part, it seems, of the claims of the estate had been presented to the Commissioners of Claims, and there had been an allowance by that Commission. This part the Quartermaster General was to exclude from his consideration, and it does not enter into the present case.

Mrs. Nutt accepted the provisions of the act of Congress. In pursuance of the authority thereby conferred upon him the Quartermaster General investigated her claims, received and considered testimony both on behalf of the claimant and on behalf of the United States, and through the Secretary of War reported to Congress the result of his investiga-

tion. He found that property belonging to Haller Nutt, of the aggregate value of $256,884.05, had been taken and used by the troops of the United States, and he recommended payment to Mrs. Nutt of that amount. His report bears date on December 22, 1882.

It does not appear that Congress took any action on the subject during that session; but the next Congress, at its first session ensuing, by an act approved July 5, 1884, and entitled "An act for the allowance of certain claims reported by the accounting officers of the United States Treasury Department, and for other purposes," directed the payment to Mrs. Nutt of the sum of $35,556.17 on account of the claim. This act (23 Stat., 552) is as follows:

"*Be it enacted, &c.*, That the Secretary of the Treasury be, and he is hereby, authorized and required to pay, out of any money in the Treasury not otherwise appropriated, to the several persons in this act named, the several sums mentioned herein, the same being in full for, and the receipt of the same to be taken and accepted in each case as a full and final discharge of the several claims examined and allowed by the proper accounting officers under the provisions of the act of July 4, 1864, since January 6, 1883, namely:"

(Here follows a long list of claimants from Tennessee, Kentucky, West Virginia, Indiana, Pennsylvania, Ohio, Maryland, Missouri, District of Columbia, Colorado, Illinois, Indian Territory, Iowa, and Kansas—which were all included in the act of 1864, whereas Mississippi was not—with the several sums allowed to them, respectively. Then the act proceeds as follows:)

"Mississippi.—To Julia A. Nutt, widow and executrix of Haller Nutt, deceased, of Adams county, the sum of thirty-five thousand five hundred and fifty-six dollars and seventeen cents ($35,556.17)."

It may be proper to state, what appears from the records of Congress, that this act was originally a bill of the

House of Representatives under the caption of "An act for the allowance of certain claims reported by the accounting officers of the Treasury Department;" that it provided only for payment of claims under the act of July 4, 1864; that the provision for the payment to Mrs. Nutt was not in it; that this provision was inserted in the Senate as an amendment; that at the same time to cover this amendment the words "and for other purposes" were added to the caption of the bill; that the House of Representatives concurred in the amendment, and the bill, as amended, received the signature of the President and became a law.

It is proper, also, to add that the act of July 4, 1864 (13 Stat., 381), to which reference is made, was an act to prevent the Court of Claims from entertaining jurisdiction of any claims growing out of the destruction or appropriation of property by the army during the rebellion, and to provide that the Quartermaster General and Commissary General, respectively, should examine claims of loyal citizens in States not in rebellion for stores or supplies furnished or taken for the use of the army, and, if found by them to be just, should report them to the Third Auditor of the Treasury, with a recommendation for settlement. It was modified by the act of June 14, 1874 (18 Stat., 75), which required the Secretary of the Treasury to report these claims to Congress for consideration before any payment should be made.

Mrs. Nutt had no claim pending under the act of July 4, 1864, nor any other claim whatever than the one in suit here. The accounting officers of the Treasury had not passed upon her claim. It had never come before them in any way; nor had it been examined and allowed subsequent to January 6, 1883. It was not affected, therefore, by any of the limitations in the act of July 5, 1884, the act which contained the appropriation of $35,556.17.

It does not appear by what process of calculation this specific sum was reached. Mrs. Nutt received the amount, but gave no further receipt for it than the indorsement of a

draft for the amount, and was not required to give any receipt. It was distinctly understood that it was a payment on account, and not a payment in full discharge of the claim.

She brought suit in the Court of Claims in the nature of a suit in assumpsit on an implied promise by the United States to pay her the sum of $256,884.05, found by the Quartermaster General to be due to her, upon the theory that the transaction amounted either to an arbitration and award or to the equivalent of an account stated between individuals, and that the payment by Congress of the sum appropriated by the act of July 5, 1884, was an acceptance and ratification by that body of the report of the Quartermaster General,

The Court of Claims decided adversely to the claim, and from that decision the claimant appeals.

II.

ASSIGNMENT OF ERRORS.

1. The Court of Claims erred in dismissing the appellant's petition.

2. The Court of Claims erred in adjudging that the Quartermaster General's finding in favor of the appellant was neither an award pursuant to arbitration nor in the nature of an account stated.

3. The Court of Claims erred in adjudging that Congress did not accept, ratify, or acquiesce in the Quartermaster General's finding.

4. The Court of Claims erred in holding that the payment of part instead of the whole negatived the idea that the whole was acquiesced in by Congress and acknowledged as an indebtedness.

5. The Court of Claims erred in adjudging that the appellant was not entitled to recover from the United States the amount of her claim.

III.

BRIEF OF ARGUMENT.

The appellant respectfully submits the following three propositions as applicable to this case:

1. The reference of the claim by Congress, with the consent of the claimant, to the Quartermaster General constituted, under the special provisions of the act of reference, a submission to arbitration, and the Quartermaster General's conclusion or finding was an award pursuant to arbitration, upon which suit can be maintained.

2. If the reference to the Quartermaster General, and the finding by him, do not constitute an arbitration and award, they are at least the equivalent of an account stated between private individuals.

3. Even if of itself the finding of the Quartermaster General did not constitute an account stated, it became such by its acceptance by Congress and the appellant.

1.

The first question raised is whether there was here a case of arbitration and award.

It is, of course, not an open question that Congress may, if it chooses, submit to arbitration a controversy between it and a citizen, and that an officer of the Government may be selected as the arbitrator.

Whether the reference of a controversy to an officer of the Government for examination and adjustment constitutes

an arbitration or not, depends entirely on the act of reference and the agreement of the parties. A reference for information is, of course, very different from a reference for determination or arbitration. The subject was discussed in the case of Gordon (7 Wallace, 188), and in that of Chorpenning (94 U. S., 397), and the criterion of distinction is the character of the duty to be performed by the referee. Where the duty is merely ministerial, a submission to arbitration is not to be inferred even from the use of such words as "*examine and adjust*," and "*investigate and adjust*." But where judicial duties are imposed on the referee, such as the receiving and weighing of testimony, then necessarily an arbitration is implied from the use of these or any equivalent terms.

When information merely is wanted, Congress usually seeks it by means of a joint resolution. It does not resort to a formal act. In the present instance, recourse is had to a solemn act of Congress, and the powers conferred on the Quartermaster General are to have the parties before him, to hear and sift the evidence on behalf of both, and to decide upon this evidence. Assuredly this confers judicial power and constitutes arbitration.

But it is argued that, because Congress directs the Quartermaster General to report the facts to that body and reserves the matter for its own further consideration, there is not, and cannot be, the finality of an arbitration in the finding of that officer.

Let us examine the circumstances of the case. The character of the appellant's claim was apparent on its face. It was for compensation for property taken and used by the army, and some of which was destroyed after it had been so taken. Unless Congress intended to admit general liability, if the facts were of the character stated, any reference to any person or tribunal would have been useless and absurd. But upon the theory that the claimant should be paid, if the facts were as stated, it referred the claim for the ascertain-

ment of those facts. What facts? The fact of taking; what property, if any, was taken, and the value of it. And it was evidently the intention of the act of Congress that upon these facts the finding of the Quartermaster General should have the force of a special verdict of a jury, and should be final and binding.

The Quartermaster General found these facts; found that certain property, the items of which he specified, had been taken and used by the army, and he found the aggregate value of this property to be, as already stated, $256,884.05. This statement is an award by the person to whom the case was referred to find them. It is final and conclusive.

What did Congress reserve to itself? It directed the Quartermaster General to report the facts to it. That has no special significance. An arbitrator should report his award to both parties, and especially was it necessary to report it to Congress in this instance, because no provision had been made for payment.

But Congress reserved further the right to consider the facts so to be reported with other claims to be reported by the Quartermaster General. That is a right which it reserves to itself in cases even where final judgments are rendered. The consideration reserved evidently is, whether and when and how it will appropriate for payment, if payment has been found to be proper. It did not mean to reserve to itself to determine whether any property had been taken or not; or, if any of it had been taken, what the value of it was. It did not mean to review the decision of the Quartermaster General on those points. The Quartermaster General was not a mere commissioner to take testimony for the use of Congress, but an arbiter to determine certain facts—to determine what indebtedness, if any, there was on the part of the United States to this claimant, and provision for the payment of the indebtedness, if any there existed, was what Congress reserved to itself.

In the opinion of the Court of Claims in this case, it is said:

"The private act was simply a direction by a principal (Congress) to an agent (the Quartermaster General) to investigate a demand presented by a third person (the claimant), and report the facts for the consideration of his principal. If such a statute can be made the basis of legal liability, it will be dangerous for Congress to seek information in any case or give assistance to any claimant."

And this is the contention of counsel for the United States. The statement is scarcely accurate in any particular. The special act for the benefit of the claimant was something more than a mere direction from a principal to an agent. The duty imposed on the Quartermaster General was something more than a mere investigation for the information of Congress. It was not a mere *ex parte* investigation involving only ministerial discretion. It was an investigation by a referee with the parties before him as litigants, accepted as such by the parties, and with all the formalities of a judicial proceeding.

If this be simply a direction by a principal to an agent to investigate merely for the benefit of the principal the facts as to a demand presented by a third person, there was a very singular parade of judicial authority, proving a delusion and a snare to the claimant.

The true meaning of the act plainly was to constitute an arbitration and award, but to provide that the award should not be paid as of course through the accounting officers of the Treasury, but should be reserved for a special appropriation by Congress.

2.

But whether there was here a techincal arbitration or not it is certain that, in the language of the Court in the case of the United States *vs.* Kaufman (96 U. S., 567), "the allow-

ance of a claim under this statute is equivalent to an account stated between private parties, which is good until impeached for fraud or mistake."

The Kaufman case arose under a general act—section 3232 of the Revised Statutes—which gave the Commissioner of Internal Revenue power, "upon proper evidence of facts," to make allowance for internal revenue stamps spoiled or destroyed. A single claim for such loss or destruction was presented to the Commissioner. He examined and allowed it; but, for some reason, the accounting officers of the Treasury refused to pass the claim. The claimant sued in the Court of Claims upon the Commissioner's allowance as upon an account stated, and the case was brought here upon appeal. In its opinion this Court said:

"It would seem to be clear from this statement that the allowance of a claim by the Commissioner of Internal Revenue, under the authority of these statutes and Treasury regulations, raised an implied promise on the part of the United States to pay any amount that might actually be due the claimant under such circumstances, and certainly such a claim would be 'founded upon a law of Congress.'

* * * * * * *

"The claim has been presented to and allowed by the proper officer. The claimant has pursued the statutory remedy to the end. He is satisfied with the decision that has been given, and insists upon the payment which the Government has undertaken to make. No special remedy has been provided for the enforcement of the payment; and consequently the general laws which govern the Court of Claims may be resorted to for relief, if any can be found applicable to such a case. This is upon the principle that 'a liability created by a statute without a remedy may be enforced by an appropriate common-law action.' (Pollard *vs.* Bailey, 20 Wallace, 527). And as against the Government there are no common-law actions, any appropriate ac-

tion within the scope of the jurisdiction of the Court may be resorted to, unless specially prohibited. Here the right has been given, and a liability founded upon a law of Congress created. Of such liabilities the Court of Claims has jurisdiction, and no other remedy has been provided.

* * * * * * *

"It is now insisted that the finding of an allowance by the Commissioner is not enough, and that the Court should have gone behind the allowance and found the facts in respect to the original claim. Such, we think, is not the law. To say the least, *the allowance of a claim under this statute is equivalent to an account stated between private parties, which is good until impeached for fraud or mistake.* It is not the allowance of an ordinary claim against the Government by an ordinary accounting officer, but the adjudication by the first tribunal to which the matter must by law be submitted. Until so submitted and until so adjudicated there is not even a *prima facie* liability of the Government; but when submitted and when allowed upon the adjudication the liability is complete until in some appropriate form it is impeached. When, therefore, the Court found the adjudication against the Government without impeachment the liability to pay was established. We do not decide that in the Court of Claims the adjudication of the Commissioner may not be impeached, but we do decide that until impeached it is binding, and that the affirmative of the impeachment is upon the Government."

Here there was a special, not a general, act. But the special act for the benefit of Mrs. Nutt was broader in its scope than the general act in the Kaufman case. Otherwise, the principles laid down in the Kaufman case are precisely applicable to the present and should govern it.

In the opinion of the Court of Claims it is said:

"An *account stated* grows out of commercial transactions, being the rendition of a running account by one party to

the other and his acceptance or acquiescence in its accuracy and amount. It is, therefore, in legal effect but the liquidation of fractional items into a single amount by the agreement of parties, express or implied. In the present case the Court is unable to perceive in the report of the Quartermaster General a single element of an account stated. There was no running account between the parties; there had been no transactions which brought them within the usage of the law of merchants; the account was not rendered by one party to the other; time did not run against the Government so as to raise a presumption of acquiescence, and the subsequent payment of a part instead of the whole negatived the idea that the whole was acquiesced in by Congress and acknowledged as an indebtedness."

This is directly in the face of the decision of this Court in the Kaufman case. In that cause there was no running account, no fractional items, no commercial transactions, no technical rendition of an account by one party to the other, no formal acceptance or acquiescence by the Government. There was but the statement of one single claim by a party against the Government; and yet that was held to be equivalent to an account stated between private individuals.

It is a little difficult to understand what is meant by the statement in the opinion that "time did not run against the Government so as to raise a presumption of acquiescence." If time can run at all against the Government, more than the usual time, which is three or four months, had run in this instance; and if time cannot run at all in this connection, then there never can be any inference of acquiescence by the Government in any case from the mere lapse of time. So that in neither event is there any argument against the appellant to be based upon that ground.

3.

It is insisted that there was no acquiescence by Congress in the finding of the Quartermaster General, and no acknowledgment by it of the whole amount as an indebtedness. It is our claim that there was precisely such acquiescence and such acknowledgment, and that such acquiescence and acknowledgment perfected our cause of action.

Upon the report of the Quartermaster General the sole action of Congress was simply to appropriate a certain sum to be paid to the appellant on account of her claim. There was neither affirmance nor disapproval expressed. There was nothing but the legal inference that is to be drawn from a payment on account.

Now, as between individuals, if we take the construction of the act of August 7, 1882, as the Court of Claims takes it, most strongly against the appellant, and regard that act merely as a direction from a principal to his clerk to furnish to him a statement of a claim or account presented by a third party, who is referred to the clerk to aid him in preparing the statement, and who acquiesces in the statement as made by the clerk; and thereupon, with that statement before him, the principal, without a word either of assent or dissent, pays to the third party, on account of this precise claim, a smaller sum than that stated by the clerk to be due, most undoubtedly such payment would be construed in law to be an acknowledgment of the correctness of the statement as the amount of a present subsisting indebtedness. It is presumed that no authorities need be cited in support of a proposition of law as plain as this.

Now, is there any reason to construe the law differently when the Government is a party—to hold that although part payment on account by an individual is an acceptance and acknowledgment of the whole, part payment by the Government, on the contrary, negatives the idea of acknowledgment and acceptance? This would be to make one law

for the Government and another for the individual under precisely similar circumstances. It is respectfully submitted that this cannot be the rule of construction.

Even if we concede that it was competent for Congress to disregard the Quartermaster General's finding, to go behind it, to admit liability for some items but not for others, and to provide payment for those for which it admitted liability, without thereby committing itself to an acknowledgment of the remainder of the alleged indebtedness, it is sufficient to say that Congress has not done that here. With the whole claim before it, without a word of dissent, it directs a payment on account. Dissent in such a case certainly requires to be evidenced in some other way than by an act which between individuals is uniformly construed to mean assent.

4.

Repudiation of liability for the whole indebtedness, as stated by the Quartermaster General, might possibly have been inferred, if Congress, in the appropriation act of July 5, 1884, had provided in Mrs. Nutt's case, as in the cases of the other claimants therein mentioned, that the sum appropriated should be received in full satisfaction of the whole claim and demand.

Counsel for the Government, it is true, labors very strenuously to torture the act into a bar of this claimant, as well as of the others, but neither in word nor in spirit has the act any such meaning.

The act requires that the sums appropriated should be received in full of claims under the act of July 4, 1864. The appellant's claim did not come under that act. She had no claim then or at any other time under that act; nor was her claim reported by the accounting officers of the Treasury. None of the limitations in the act can, by any possibility of reasonable construction, be held to apply to the appellant's claim. The appropriation in her favor was not

required to be taken in full satisfaction of her claim as those in favor of the other claimants were; and if Congress had intended that it should be, it was easy enough to alter the language of the act so as to provide to that effect. That it did not so provide is evidence, so far as it affords any evidence at all, that the intention of the legislative power was quite the reverse.

5.

The items of Mrs. Nutt's original claim, as finally stated by the Quartermaster General, are set forth in the findings of fact made by the Court of Claims. But it should be remembered that the suit is not upon these, but upon the account stated, upon the sum total found due—in other words, upon the Quartermaster General's finding as to the amount due from the United States to the appellant.

The items of the claim were not in controversy in this case, although counsel for the Government seems to make a point on the fact that some of them were of a class for which the Government has not usually paid, though it has also sometimes done so. If proof were competent, it could easily enough have been shown that the items of property destroyed were destroyed after they had been taken into the use of the army, and when they had, in fact, become the property of the United States; and it could also have been shown—indeed, it is part of the public history of the time—that Haller Nutt was conspicuously loyal during the war, and that General Grant had taken the special precaution to give him a *safeguard* for himself, his family, and his property, by which the United States became legally and morally bound to insure him against loss through the act of their own forces; and it was these well-known circumstances that induced Congress to pass the special act of August 7, 1882, for the benefit of his widow and executrix, and to make that act broad enough to cover items of property for which payment was not usually made.

6.

The appellant's claim was for more than a million of dollars. She honestly believes that the amount found by the Quartermaster General, for which payment should be made, fell very far short of what was justly due; but she acquiesced in it, in the hope that she might thus terminate long years of waiting and solicitation. Suppose she was now suing for the original claim and the original amount of it, and there were no technical difficulties of jurisdiction in her way, would she not be held bound by the Quartermaster General's finding? Would she not especially be held bound by it, in view of her acceptance of a certain payment on account of it? And is she to be held bound and the United States not held to be bound? It is precisely this one-sidedness that this Court refused to recognize in the case of Gordon *vs.* United States (7 Wallace, 188). The transaction, if binding at all, must be equally binding on both parties to it.

7.

If the appellant is entitled to recover at all in this case, it is submitted that, under the recent act of March 3, 1887 (24 Stat., 505), she is entitled to recover not only the principal sum found by the Quartermaster General to be due, but also interest on it from December 22, 1882, the date of the finding.

The act in question, which expressly repeals all inconsistent acts, gives the Court of Claims jurisdiction of "all claims founded upon the Constitution of the United States, or any law of Congress, except for pensions, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States, *or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to*

redress against the United States either in a court of law, equity, or admiralty, if the United States were suable."

Damages for the violation of contracts are intended to be covered by this act. And for the violation of contracts for payment of money interest is given, as between individuals, by way of damages for the failure to pay when payment should have been made. If, therefore, there was either an award or an account stated in this case, and an implied contract thereon, interest is recoverable under this act upon the amount of the account stated for the failure to pay the same. Unless the act is intended to cover cases of this kind, it is meaningless.

8.

It is respectfully submitted that the judgment of the Court of Claims was erroneous and should be reversed, and that judgment should be entered for the appellant for the amount of her claim.

M. F. MORRIS,
Attorney for Appellant.

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Supreme Court, U.S.
FILED
JAMES H. MCKENNEY

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

JULIA A. NUTT, EXECUTRIX OF Haller Nutt, deceased, appellant,
v.
THE UNITED STATES.
No. 1380.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

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APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

In addition to the oral argument in the Court of Claims requests for conclusions of law and a printed brief of argument were submitted, which are substantially reproduced below.

The Court of Claims is requested to find conclusions of law, as follows:

First. The amended petition does not state facts sufficient to constitute a cause of action against the United States.

Second. Congress has not, by the provisions of any law, conferred jurisdiction upon the Court of Claims to hear, determine, and enter judgment in any manner whatever

upon the claim mentioned and described in the act of August 7, 1882, or in the amended petition of the claimant.

Third. The jurisdiction of the Court of Claims is barred herein by the provisions of section 1 of the act of July 4, 1864, which prohibit the said court from taking general jurisdiction of the said class of claims.

Fourth. The claimant is estopped and barred from the prosecution of this claim in the Court of Claims under the provisions of the act of July 5, 1884. The claimant having voluntarily accepted and received the amount appropriated by said act, the provisions thereof became, and have remained, a perfect bar to the prosecution of this claim.

I.—STATEMENT.

The claim in this case is not without a history. As it has grown older so has it grown larger. Payments made to the claimant have rather tended to increase than decrease the amount. In May, 1871, it was presented to the Southern Claims Commission, numbered 994, and the aggregate amount thereof, as then presented, was $117,459.92. An allowance of $56,368.25 was made and paid.

The claimant continued to seek relief in Congress, and on 7th August, 1882, an act was passed for her relief (22 Stat. L., 734). The act prohibited the examination of that part of the claim by the Quartermaster-General which had been examined, considered, and passed upon on the merits by the Commissioners of Claims, but it authorized and directed him to examine and adjust the claims

mentioned in the act, and to report the facts to Congress, there to be considered with other claims reported by the Quartermaster-General. The report of the Quartermaster-General under said act will be found in House Ex. Doc. No. 53, Forty-seventh Congress, second session.

The claimant avers in the petition that the Quartermaster-General, in the discharge of his duties under said act and by his report of the facts to Congress, stated an account between the claimant and the United States. It must be understood, therefore, that the claimant sues to recover solely upon the allegation of an "account stated," for she alleges that there is "due to the petitioner upon said account stated the sum of $235,002.50." But, having made one allegation in the petition, claimant proceeds to catch at other matters not counted upon therein, to aid her in obtaining judgment in this case. Hence the argument of counsel for claimant is not confined to the allegations of the petition, but is used as though it were a net for the purpose of catching on to some point or theory that may possibly bring the claim within the jurisdiction of the court, regardless of the contents of the petition or of the assumed foundation of the claim.

Executive Document No. 53 (*supra*) contains a full history of the claim, its investigation, and the reports thereon.

The Quartermaster-General made his report, pursuant to the private act of August 7, 1882, to the Secretary of War on December 22, 1882. The Secretary of War transmitted the report, with the papers pertaining to the same, to the President *pro tempore* of the United States Senate on January 11, 1883.

Upon the report of the Quartermaster-General, Congress allowed the claimant $35,556.17. (23 Stat. L., 552–586.)

The claimant accepted a draft for said sum under the terms and conditions imposed by said act.

The Quartermaster-General, upon facts found by him, recommended, without authority of law, the payment for certain items, amounting to $256,884.05, but Congress only appropriated for $35,556.17. It is now claimed that Mrs. Nutt, executrix, has a right of action in this court for the residue of the amount so recommended by the Quartermaster-General, to wit, $235,002.50, as on an account stated.

Counsel for claimant argues the following propositions: (1) Arbitration and award; (2) an account stated; (3) ratification of the finding of the Quartermaster-General by Congress in making an appropriation upon the findings of said Quartermaster-General; (4) claim for interest under act of March 3, 1887.

II.—Arbitration and award.

It will be observed that these are all purely legal questions, and relate primarily to the jurisdiction of the court.

The Court of Claims has never had jurisdiction to enter judgment for the value of any of the things mentioned, and alleged to have been taken from the claimant, unless the cotton is an exception, and any right of action that existed as to this item has long since been barred. The petition is an original one, and the jurisdiction of the court over the subject-matter of the claim must be found within the provisions of section 1059 of the Revised

Statutes. If, therefore, there is no award or no account stated, there is no jurisdiction; and these matters must be determined by the power and authority conferred by Congress on the Quartermaster-General by the act of August 7, 1882. The Quartermaster-General was, by the act, authorized and directed to examine and adjust the claims of Julia A. Nutt, upon such evidence as is provided for in the act, and he "*shall report the facts to Congress* to be considered with other claims reported by the Quartermaster-General."

It is contended by counsel for claimant that the action of the Quartermaster-General under the act was in effect an award. If this contention can be maintained, then the findings of every tribunal or commission which has been authorized to find and report facts to Congress constitute an award, notably the facts reported by the Southern Claims Commission (16 Stat. L., 524), or the findings of fact made by the Court of Claims under the Bowman Act, as well as the findings made by similar commissions and tribunals.

It is argued that Congress intended to confer judicial power on the Quartermaster-General in the examination of this claim under the private act, and that he was directed to report a "conclusion." This is stronger language than the act warrants. There is a material difference between a direction to report the FACTS and a direction to report a CONCLUSION. The act did not even authorize the Quartermaster-General to make a RECOMMENDATION. Congress wanted the facts, and judicial functions were not essential for the purpose of obtaining them. They were obtained ministerially, and under the act Con-

gress reserved the power to apply the law when the facts had been reported. The familiar principle or practice in the Court of Claims under the Bowman Act, that the court finds the facts and Congress applies the law, is applicable to this case.

The Quartermaster-General was simply an auxiliary to Congress in ascertaining and reporting the facts, and nothing more. His power was ministerial, and not judicial. The attempt to give him any other status is to pervert the intention of Congress, and to improperly construe the act under which he received his authority. It is not an uncommon thing for Congress to ask the assistance of officers, courts, and commissions in ascertaining the facts concerning pending claims without the intention of granting to them judicial functions. This is one of that class of cases. Judicial functions were not required in the examination and adjustment of this claim for the purpose of reporting the facts to Congress, nor were any such powers conferred by the act. An *ex parte* examination into the facts of the claim was all that was authorized by the act.

It is clear, therefore, that the report of the Quartermaster-General was not an award.

Hayburn's Case (2 Dall., 409), decided in 1792, is in point. This case is cited with approval in *United States* v. *Ferreira* (13 How., 50, 51), in the following language:

> For every judge of the court, except Thomas Johnson, whose opinion is not given, had formally expressed his opinion in writing *that the duty imposed, when the decision was subject to the revision of the Secretary and of Congress, could not be executed by the court as a judicial power.*

The claim of Mrs. Nutt, as reported to Congress by the Quartermaster-General under the act of August 7, 1882, is not entitled to consideration as a decision, for it is only a report of facts. The counsel for claimant cites several cases upon the question of arbitration and award.

In *Bruce's Case* (1 C. Cls. R., 343) a claim was referred by resolution of Congress to the Chief Engineer for examination and report. Congress passed an act to pay the claimant a less amount than was hypothetically reported, which amount was accepted. Bruce sued for the difference. The court held that the Chief Engineer was in no sense an arbitrator or referee. He was a medium of information to Congress upon an *ex parte* authority and direction for that purpose.

In *Gordon's Case* (*ibid.*, 1) the court held that the direction by Congress to an accounting officer to restate an account was not a submission to arbitrament, because there was no mutuality of obligation, and the act authorized was a ministerial one.

In *Gilbert's Case* (*ibid.*, 108) the court held that the award of a public officer, made pursuant to an express submission by Congress, which is paid by the Government and accepted by the claimant, is conclusive and final and binds both parties.

In *Lavalette's Case* (*ibid.*, 147) the court held that the finding of a judge, which by the terms of a special act of Congress is made subject to the revision of the Secretary of War, is an award, *but that the Secretary's approval is necessary to perfect the approval. The judge acts as a commissioner.*

In the *Carmick & Ramsey Case* (2 C. Cls. R., 126) the

cases of Gordon, Gilbert, and Kellog are reviewed and affirmed. Congress directed an award in the case, and appropriated money to pay the same. The court held that an acceptance by the claimant made the award binding on both parties. The contrary was held in *Bogart's Case* (*ibid.*, 159) on an award upon a contract by an Auditor.

In *Chorpenning's Case* (3 C. Cls. R., 140) the court held that the action of the Postmaster-General required the exercise of a judicial discretion, and was final and conclusive. The court adds:

> But it is not yet determined in the Court of Claims whether such an adjustment is to be deemed the award of an arbitrator, or the decision of a special tribunal, clothed with exclusive jurisdiction. No decision has yet been rendered *against the Government* on any such award: The petition was dismissed. (See 94 U. S. R., 397.)

For the opinion of the Supreme Court in *Gordon's Case* on appeal (1 C. Cls. R., 1) see 7 Wallace, 188, or 7 C. Cls. R., 46. The reasoning of Mr. Justice Grier as to what does and does not constitute an arbitration is worthy of the especial attention of this court. We contend that in the instructions in the special act to the Quartermaster-General in this case as in that, Congress reserved "to itself the power to approve, reject, or rescind, or to otherwise act in the premises as the exigencies of the case might require."

Chorpenning's claim came up for hearing again at the December term, 1875 (11 C. Cls. R., 625), and the petition was again dismissed. The court decided at that time every important and material question that can arise in the case at bar, and all the rulings therein are against the

present claimant. The Supreme Court affirmed the first decision on appeal, and used stronger language than had been used by the court below. (12 C. Cls. R., 110; 94 U. S. R., 397.)

Inasmuch as the court could not entertain original jurisdiction of this claim, the same having been prohibited by the act of July 4, 1864, it can not entertain jurisdiction of an action on an award made by the Quartermaster-General, even if it were granted that an award exists in this case. *Luddington's Case* is in point (15 C. Cls. R., 453).

In *Huffman's Case* (17 C. Cls. R., 55) the court says:

> Where a statute directs an executive officer to examine a class of claims and report them to Congress, there to await legislative action, the report has not the final character of an award, and no action can be maintained upon it * * * .

Kaufman's Case (11 C. Cls. R., 659) is relied on by the claimant. In *Luddington's Case* (*supra*) the Court of Claims has stated why it could not take jurisdiction of claims for property such as the claimant's even upon an award. Section 1 of the act of July 4, 1864, prohibits and bars such jurisdiction.

The report of the Quartermaster-General under the act of August 7, 1882, amounted to no more than the reports made by the Southern Claims Commission under the act 3d March, 1871, or the reports made by the Court of Claims under the Bowman act. None of the reports made by these respective commissions or tribunals are judicial; the decisions are not final; but they are the reports of a special committee, charged with a preliminary investigation,

the final decision thereon being in Congress. (*Dodd* v. *United States*, 21 C. Cls. R., 117.)

Mrs. Nutt's claim is of that class which possesses no merit in law. The policy of Congress has always been not to recognize such merit in either its general or special legislation. The laws of Congress have never gone further in legal effect than to authorize some special committee to make a preliminary investigation and report of the facts. The final decision has always been reserved by and to Congress.

There is nothing in the act of August 7, 1882, to indicate a change of policy in favor of Mrs. Nutt. In fact, there is everything to indicate that the claim was to be investigated, reported, and treated as other claims of its class in such preliminary investigation.

The powers of the Quartermaster-General were restricted to the provisions in the act. He was authorized and directed—(1), to examine and adjust the claims of Mrs. Nutt * * * for live stock, goods, and moneys taken and used by the United States or the armies thereof; (2), he *may* consider the evidence, etc.; (3), he shall report the *facts* to Congress, to be considered with other claims reported by the Quartermaster-General; (4), he is prohibited from investigating a certain part of the claims.

(*a*) The Court of Claims has heretofore decided what it is to examine and "adjust" a claim under a law similar to the one by which this claim was referred to the Quartermaster-General. So much of the language as is pertinent to the point is reproduced, to wit:

> We have here the simple, naked power "to investigate and adjust." There is no power to "settle,"

no power to "determine" equities, no power to make "allowance" otherwise than upon the rules of adjustment laid down in the joint resolution; but the whole capacity conferred is merely to *adjust*.

And what is it to adjust? According to Worcester, it is "to prepare and put in order for settlement;" and according to Webster, "to settle or bring to a satisfactory state, so that parties are agreed as to the result." Manifestly, every arbitration contains an adjustment and more; but equally manifestly every adjustment does not contain an arbitration. In no sense are the words "adjust" and "arbitrate" convertible terms. It is, therefore, quite in vain to contend that the joint resolution involved in this case was a submission by the Government to an arbitrament and award. (*Chorpenning's Case*, 11 C. Cls. R., 629.)

We submit that to "investigate and adjust" a claim, as provided in the Chorpenning resolution (16 Stat. L., 673), and to "examine and adjust" the claims as provided in the act in relation to Mrs. Nutt's claims (22 Stat. L., 734), is one and the same thing.

(*b*) The Quartermaster-General was authorized and directed to consider such evidence *ex parte* as he deemed proper in ascertaining the facts. There was no difference in his power in this respect and that of other officers, courts, commissioners, or tribunals that have been authorized by similar laws to perform ministerial duties.

(*c*) His power and authority did not extend beyond reporting the facts to Congress. His *recommendation* that any sum be paid was unauthorized by law and void. When the facts were reported, they were to be considered in the same manner with like claims reported by the

Quartermaster-General. What other claims were reported under the laws of Congress by the Quartermaster-General? It will be seen by the terms of the act that Mrs. Nutt's loyalty was no longer in question. Hence the claim was properly classed with those of other loyal claimants whose claims had been reported to Congress by the Quartermaster-General. It was simply classed by the act for the consideration of Congress with other claims reported by the Quartermaster-General. That it was so classed in its consideration is shown by the *Appropriation Act of July* 5, 1884 (23 Stat. L., 586).

(*d*) He was prohibited from the consideration of such part of Mrs. Nutt's claims as had been passed upon on the merits by the Southern Claims Commission.

The above is, in brief, a fair construction of the act in connection with decisions bearing upon arbitration and award. There is nothing in the language of the act that shows Congress intended to submit to an arbitrament. That it was not an arbitrament is plain not only from the terms of the act, but from the various decisions of the courts to the contrary, which are based on similar acts of Congress.

III.—An Account Stated.

The claimant relies chiefly upon the ground of an account stated for recovery in this action. Just how the claim can be treated as an account stated is not clearly disclosed. The property was taken by and for the use of the Army. It consisted of stores and supplies. It never was an account against the Government, but a claim. It has never been recognized as possessing any legal status

or merit. The accounting officers of the Government have never been authorized by law to take cognizance of it for any purpose whatever. It is not now therefore, and never was, even an *account* against the Government. Whatever recognition this claim and others of its class have received from Congress has been a matter of grace, and not because they were legal demands on account or otherwise. No account has ever existed. This is evident from the character of the claim and its origin. Without an account upon which to base it there can not be an account stated. What is an account?

> An account is a list or statement of monetary transactions, such as payments, purchases, sales, debts, credits, etc., in most cases showing a balance or result of comparison between items of an opposite nature, *e. g.*, receipts and payments. (Sweet's Law Dict.; Rapalje & Law. Law Dict.)
>
> A detailed statement of the mutual demands in the nature of debt and credit between parties arising out of contracts or some fiduciary relations. (Bouvier's Law Dict.; *Whitewell* v. *Willard*, 1 Metc. (Mass.), 216; *McWilliams* v. *Allan*, 45 Mo., 573.)

It is, we think, indisputable that the peculiar character of the claim described in the act of August 7, 1882, and which the Quartermaster-General was authorized to examine as to the facts, does not come within any of the above definitions of an account.

There was no implied responsibility on the part of the Government for the property mentioned in said act, either created by law or otherwise. It was a claim which Congress could entertain or reject at its pleasure, and in its rejection no legal obligation would have been violated.

The right to finally dispose of the claim has always been, and now remains, in Congress, where it has been treated as a claim without legal merit, and not as an account.

If there was no account, how then could there have been an account stated? What is an account stated?

> When two persons, having monetary transactions together, close the account by agreeing to the balance appearing to be due from one of them, this is called an account stated. (Sweet's Law Dict.; Rapalje & Law. Law Dict.; Black. Com., III, 164; Chitty on Contracts, 599 *et seq.*; *Reinhardt* v. *Hines*, 51 Miss., 344; *McCall* v. *Nave*, 52 Miss., 494; *Stebbins* v. *Niles*, 25 Miss., 267; *Zacarino* v. *Pallotti*, 49 Conn., 36.)
>
> A stated account properly exists only where accounts have been examined and the balance admitted as the true amount between the parties without having been paid. (*Stebbins* v. *Niles, supra*; *McCall* v. *Nave, supra*; *Reinhardt* v. *Hines, supra*.)

The claim in this case did not originate in monetary transactions between the parties. It is not made up of receipts and payments; not a cent of it has ever been recognized as due from the Government and unpaid; nor has any balance even been admitted by the Government as the true amount between the parties. Hence it is plain that Mrs. Nutt may have a *claim*, but it does not amount to either an *account* or an *account stated*.

In *Zacarino* v. *Pallotti* (49 Conn., 36) the court says:

> An account stated is an agreement between persons who have had previous transactions, fixing the amount due with respect to them.

No such agreement has been made in regard to the sub-

ject-matter of this claim. The Quartermaster-General had no authority under the law to make, or bind the Government by, any such agreement. He did not undertake to do so. Congress has never expressed an intention to agree to a stated account on any terms. In its action on the report of facts made by the Quartermaster-General, Congress expressed a contrary intention by the appropriation of a smaller amount than shown by such facts, upon the express condition that its acceptance should be a payment in full of the whole claim. (23 Stat. L., 586.)

The claimant's counsel base the "account stated" upon the ground that the Quartermaster-General *recommended*, after a full statement of all the facts, that Mrs. Nutt was entitled to be paid for certain items in the sum of $256,884.05. As before stated, the recommendation was not one of the *facts* asked for by Congress; it was not authorized by the act, and is a nullity. It would not amount to an account stated in any view of the case, inasmuch as it lacks all of the essentials that are required to make up the agreement to constitute such an account. A recommendation, even if authorized, made to Congress by the Quartermaster-General, would not make an account stated. There must have been an agreement between the Government and the claimant in order to reach any such result. A third party can not agree to a balance for them.

The case of *Kaufman* v. *United States* (96 U. S. R., 567) is cited in behalf of the claimant. We have heretofore attempted to distinguish this class of claims, which are undoubtedly founded upon a law of Congress, from the one now under consideration. Mrs. Nutt's claim has never been granted a day in court. In fact, the jurisdic-

tion thereof has been specially barred by the provisions of the act of July 4, 1864.

It would be folly to assert this court could take jurisdiction of this claim under the act of August 7, 1882. And is it not equally preposterous to attempt to found the jurisdiction of the court upon any action of the officer thereunder, whether it is called an award or an account stated? The acts of the officer in this instance, made in pursuance thereof, can not transcend the provisions of the act of Congress under which he gets his authority. In other words, if this claim can be brought within the ruling in the Kaufman Case (*supra*), will it not be a claim founded upon a law of Congress?

Where is the law of Congress upon which to found the claim of Mrs. Nutt? It can not be claimed that the act of August 7, 1882, is such a law. How then can the report of the Quartermaster-General confer jurisdiction in any manner whatever upon the Court of Claims? The claims and the law in relation thereto are not alike. For the distinction see *Luddington's Case* (15 C. Cls. R., 453).

The claimant's counsel proceeds in this case upon the theory, which is a mistake, that the Quartermaster-General was authorized to adjudicate Mrs. Nutt's claim. The act neither expressly nor impliedly authorized an adjudication by the Quartermaster-General. Congress reserved the right of adjudication to itself. The Quartermaster-General was directed to find and report the facts to Congress upon which such adjudication was to be made.

Congress never parted with its judicial power over the claim by remitting it to any tribunal for adjudication. It is the only tribunal that has ever had the power to adju-

dicate, allow, and pay whatever sum it may have ascertained from the facts reported by the Quartermaster-General to have been due the claimant.

Whether Congress has not so adjudicated, allowed, and paid whatever amount has been found due the claimant upon a fair and proper consideration of such facts is a question for the consideration of the court.

IV.—Ratification.

If the counsel for the claimant is serious in urging the right of Mrs. Nutt to recover upon a ratification by Congress of the findings of the Quartermaster-General, then it is to be presumed that it is admitted that such Quartermaster was unauthorized to make either an award or an account stated. For a "ratification is where a person adopts a contract or other transaction which is not binding on him, because it was entered into by an unauthorized agent (Leake Cont., 268), or the like." (Rapalje & Lawr. Law Dict.)

To base the claim in this case upon a ratification is in effect to declare the Quartermaster's report of facts, which is called an award or account stated by the claimant, the act of an unauthorized agent, and to abandon the ground heretofore contended for by the claimant, that the so-called award and account stated ever had any binding force within themselves. In seeking to recover upon this ground it must be regarded that the claimant has abandoned the other two.

What, however, is the foundation for a ratification? It must be remembered that Congress remitted the claim of Mrs. Nutt to the Quartermaster-General by special act,

with authority to examine and adjust it and to report the facts to Congress, *to be considered with other claims reported by the Quartermaster-General.* By this character of remittance, or special reference of the claim, Congress reserved to itself, as decided in Gordon's Case in the Supreme Court, "The power to approve, reject, or rescind, or to otherwise act in the premises as the exigencies of the case might require."

That the report of the Quartermaster-General was not approved *in solido* is apparent; there was nothing to rescind; that the greater part of it was rejected is equally apparent; that Congress proceeded to otherwise act in the premises, as the exigencies of the case required, by the appropriation of such sum as was deemed proper upon the facts reported, is equally clear. Did the exercise of the powers reserved by Congress to itself under the law amount to a ratification? If so, a ratification of what?

A reliance on the ratification by the claimant is an acknowledgment and admission that the Quartermaster-General had no authority under the act to either make an award or state an account. But inasmuch as the Quartermaster-General has performed his ministerial duty in the premises, and reported the facts to Congress through the Secretary of War, it will now be in order to consider the proceedings of Congress concerning the claim.

It will be observed that Congress by the special act provided that when the facts were reported they were *"to be considered with other claims reported by the Quartermaster-General."* For a proper understanding of the provision of the act which is quoted above it will be necessary to inquire what other claims are reported by the

Quartermaster-General for the consideration of Congress. By such inquiry the status of the present claim for consideration by Congress will be ascertained.

The only claims which the Quartermaster-General is authorized by law to examine and report for settlement are those mentioned in section 2 of the *Act of July* 4, 1864 (13 Stat. L., 381). These claims are reported by the Secretary of the Treasury to the Speaker of the House at the commencement of each session of Congress. It is made the duty of the Speaker to lay the same before Congress for *consideration*. *Act June* 16, 1874, section 2 (18 Stat. L., 75; Supp. Rev. Stat., Vol. I, p. 37).

It is readily perceived that Congress classed Mrs. Nutt's claim for consideration, on the facts reported under the special act, with the claims reported under the act of July 4, 1864. It was so considered, as Congress had expressly intended it should be, in making an appropriation for its payment. It will not explain away the intention of Congress, therefore, to assert that this claim is not controlled by the terms and conditions expressed in the *Act of July* 5, 1884 (23 Stat. L., 586).

The claim belonged to the class of claims appropriated for under said act by express legislation. Mrs. Nutt having accepted the amount appropriated, upon the terms and conditions expressed in the act, is just as much estopped from making further claim as any other claimant named in such act. It would be splitting a hair to make a distinction. It is to be presumed that Congress considered the facts reported by the Quartermaster-General, as required by the act of August 7, 1882, and that, having so considered the claim, it was placed with the class to

which it properly belonged, and an appropriation made accordingly.

When, therefore, Mrs. Nutt accepted the sum of $35,556.17 under the provisions of a law which expressly provided that the same should be "in full for, and the receipt of the same to be taken and accepted * * * as a full and final discharge" of her claim, such acceptance became binding as a payment in full. The act does not provide for partial payment to Mrs. Nutt, or any other person, but on the contrary specifically says the acceptance of the respective sums appropriated shall be a full and final discharge of the claims.

The law can not be construed to mean something that has not been expressed, and that can not be impliedly intended. The intention of Congress is plain, and the law is unambiguous. It is said the law only applies to claims examined and allowed by the proper accounting officers of the Treasury. We have heretofore attempted to show that this claim belonged to this class by the legislation of Congress.

No matter how Mrs. Nutt's claim was reported to Congress, she should not be allowed to escape the material provisions of the law upon a mere technical construction. She brought her claim within the stringent restrictions of the act by her voluntary action. It would be unfair to permit her to accept the benefit of the act, and then afterwards to declare the most important provisions made for the protection of the Government did not apply to her and her claim. She has brought her claim within the purview of the act, and must be bound by all of its provisions. She can not accept the part of it which benefits

her, and reject the part which is of benefit to the Government and adverse to her interests. She can not accept part and reject the other part of the act at her pleasure. This, in accordance with a familiar legal maxim, is the law on this point, namely:

> He who derives the advantage ought to sustain the burden. *Qui sentit commodum sentire debit et onus.* (Broom's Legal Maxims, 7th ed., p. 705, p. *706.)
>
> A further important illustration of the rule occurs where a party adopts a contract which was entered into without his authority, in which case he must adopt it altogether. He can not ratify that part which is beneficial to himself and reject the remainder; he must take the benefit to be derived from the transaction *cum onere.* (*Ibid.*, p. 707, p. *708.)
>
> The principle on which this doctrine depends is that a person shall not be allowed at once to benefit by and to repudiate an instrument, but that, if he chooses to take the benefit which it confers, he shall likewise discharge the obligation or bear the onus which it imposes. (*Ibid.*, p. 710, p. *711.)
>
> (See also *United States* v. *Adams*, 7 Wall., 463; *United States* v. *Child*, 12 *ib.*, 232; *United States* v. *Justice*, 14 *ib.*, 535; *Baird* v. *United States*, 96 U. S. R., 430.

Other quotations and references could be made, but we think it has been already shown that as a principle of law Mrs. Nutt can not accept and enjoy the benefits of the *Act of July* 5, 1884 (23 Stat. L., 586), and at the same time reject its conditions.

The part of the act which refers to "the several claims examined and allowed by the proper accounting officers

under the provisions of the act of July 4, 1864, since January 6, 1883," is descriptive only, and can not be said to be inoperative as to Mrs. Nutt's claim whether it is included in such description or not. A false description would not make the law inoperative as to her claim.

> No general words in a statute divest the Government of its rights and remedies. (*United States* v. *Herron*, 20 Wall., 251.)

As to the effect of what took place between the claimant and the officers of the Treasury Department, the court is referred to *Burwell's Case* (22 C. Cls. R., 92); *Savage* v. *United States* (92 U. S. R., 382).

The principles laid down in Burwell's Case are applicable here. The acceptance by Mrs. Nutt of the amount appropriated was, as in the Burwell Case, a complete finality, and a perfect bar to any further controversy upon the subject.

The acts of August 7, 1882, and July 5, 1884, should be considered *in pari materia* in construing the latter law.

> The meaning of the legislature may be extended beyond the precise words used in the law, from the reason or motive upon which the legislature proceeded, from the end in view, or the purpose which was designed; the limitation of the rule being that to extend the meaning to any case not included within the words, the case must be shown to come within the same reason upon which the law-maker proceeded, and not a like reason. (*United States* v. *Freeman*, 3 How., 556.)

When the acts aforesaid are considered together the

reasons or motives upon which Congress proceeded in making the appropriation are readily understood. The words of the former statute are important, and govern the construction of the subsequent one.

In *United States* v. *Kirby* (7 Wall., 486, 487) the Supreme Court says:

> All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. *The reason of the law in such cases should prevail over the letter.*

All the points argued in the claimant's brief have now been answered, except the right to recover interest under the act of March 3, 1887. As a matter of fact, only one of the propositions argued in the brief arises upon the allegations of the petition (excepting, also, the question of interest), but as a courtesy to the counsel on the other side, all the questions have been reviewed and argued on behalf of the Government.

V.—Interest.

The Government was never liable for Mrs. Nutt's claim. It was at no time a debt or demand against the Government. It is not such now. Opportunity has simply been afforded the claimant to be heard upon a claim for which the Government is neither responsible nor liable. Inasmuch as the claimant has never been entitled to redress

in any court, and is not now so entitled, we do not see how the court can award interest.

The judgment should be affirmed.

A. H. GARLAND,
Attorney-General.
HEBER J. MAY,
Assistant Attorney.

MARCH 12, 1888.